CHPC Statement on not hearing 2021 application

The Public have been prevented on making representation to the 2021 application if determined by this Appeal

MR JUSTICE DOVE in Holborn Studios Limited [2020] EWHC 1509 (Admin) decision of 11 June 2020 referred to this in paras 46, 47 and 71

We note the main topics oif this case concerned Planning Viability and lobbying of Committee members

In para 46 he refers to … *In connection with these legal provisions the claimant places reliance upon the case of* ***R(Joicey) v Northumberland County Council*** *[2014] EWHC 3657; [2015] PTSR 622 in which he refers to para 47 of that judgement*

> *47. If this is an argument that the Council complied with its legal obligations to publish, it is not one I accept.* Right to know provisions relevant to the taking of a decision such as those in the 1972 Act and the Council's Statement of Community Involvement require timely publication.
>
> Information must be published by the public authority in good time for members of the public to be able to digest it and make intelligent representations

In the 2021 application this in the middle of the Inquiry as representations are due by 20 November 2021

The para continues

> *cf. R. v North and East Devon Health Authority Ex p. Coughlan [2001] QB 213, [108]; R (on the application of Moseley) (in substitution of Stirling Deceased) v Haringey LBC [2014] UKSC 56, [25]. The very purpose of a legal obligation conferring a right to know is to put members of the public in a position where they can make sensible contributions to democratic decision-making.*

If the Appeal is determined on the 2021 application this right is removed

> *In practice whether the publication of the information is timely will turn on factors such as its character (easily digested/technical), the audience (sophisticated/ ordinary members of the public) and its bearing on the decision (tangential/ central).*

Brett, similar to Arlington, by doing everything last minute – understandably to maximise their benefit reduces the ability of members of the public to be heard in the democratic decision making process

> *48. In my view publication was not effected in a timely manner in this case. The WSP noise assessment was a 74 page technical document. It was directed to ordinary members of the public who might wish to make representations on the planning application.*

CHPC, and EARA, do not agree publication was effected in a timely manner to allow proper consideration by the Inquiry by the public.

Once again if the Appeal is determined on the 2021 application this right to make representations on the planning application is removed.

As to the claimant, he has some background in wind turbines and was able to make a few effective points about what he conceived as the flaws in the assessment in his presentation to the committee. But this was only one of a number of points he had to deal with in what, after all, was a very short period of 5 minutes. In light of the statement in the officer's report of "no planning history", he dealt with that, as well as the officer's failure to mention the Renewable Energy guidance. So the claimant's exposure of what he contended were the flaws in the assessment report was necessarily brief. With more time than 36 hours I have no doubt that he could have done more. Given the history of the matter, noise went to the heart of the committee's decision and not tangential."

The judgement continues at para 71

71. Drawing the threads together, the material contained in the public domain at the time when the decision was taken by the planning committee to resolve to grant planning permission was inconsistent and opaque. It contained figures which differed in relation to, for instance, benchmark land value and the differences between the figures were not explained.

    No explanation was provided as to how the benchmark land value had been arrived at in terms of establishing an existing use value and identify a landowner's premium as was asserted to have been case. Read against the background of the policy and guidance contained in the Framework and the PPG it was not possible to identify from the material in the public domain standardised inputs of the existing use value and landowner's premium, and the purpose of the policy to secure transparency and accountability in the production of viability assessment was not served. In particular, it was plain from the material available at the time of the decision (in particular in terms of the material inconsistencies in the material produced in September 2018 and the differences from the material in the committee report) that there was substantial additional background material on which the committee report was based which was neither listed nor available for inspection in accordance with the requirements of the 1972 Act.

    In my view the principles identified in the case of *Joicey* by Cranston J at paragraph 47 are clearly on point, “since the purpose of having a legal obligation to confer a right to know in relation to material underpinning a democratic decision-taking process is to enable members of the public to make well-informed observations on the substance of the decision.”

Finally if the Appeal is determined on the 2021 application this right to to enable members of the public to make well-informed observations on the substance of the decision is removed.

> The failure to provide the background material underpinning the viability assessment in the present case, in circumstances where such material as was in the public domain was opaque and incoherent, was a clear and material legal error in the decision-taking process. In reality, in my judgment, the material with which the public was provided failed Mr Fraser-Urquhart's own test of being adequate to enable the member of the public to make a sensible response to the consultation on the application.

For all of the above reasons should only be determined on the 2016 application and not decisions made behind closed doors out of the gaze of public scrutiny

16th November 2021